HARVARD LAW REVIEW.

Published monthly, during the Academic Year, by Harvard Law Students.

SUBSCRIPTION PRICE, $2.50 PER ANNUM . . . . . 35 CENTS PER NUMBER

JAMES BARR AMES, Dane Professor of Law and Dean of the Harvard Law School since 1895, died at Wilton, N. H., January 8, 1910. Many are the teachers whose intellects command the admiration of their students, but few are those for whom their students feel a real and sincere affection. Dean Ames was both admired and loved. The genius of his clear mind was our inspiration and made to thrill with live and human interest, subjects which might have proven dry and tedious. His kindly interest and ever present sympathy in our work brightened our student lives. Though tireless in his own labors, he was never too busy to hear our often trivial questions or to help us in our difficulties. He never sermonized: his life was a sermon.

As a Trustee of the HARVARD LAW REVIEW since its founding and as a frequent contributor to its pages, Dean Ames has been to this Review a friend for whose services we are deeply grateful. It is planned to make the March issue a memorial number.

THE LAW SCHOOL. — Professor Samuel Williston, LL.B. 1888, one of the founders of the HARVARD LAW REVIEW, has been appointed Acting Dean. The courses in Pleading and Equity II will be conducted, for the rest of the school year, by Mr. Austin W. Scott, LL.B. 1909, and the course in Equity III by Mr. Charles F. Dutch, LL.B. 1905, both former editors of this Review.

THE CONSTITUTIONALITY OF THE NEBRASKA BANK DEPOSITORS' GUARANTY LAW. — The courts have declared that the exercise of the state police power is subject to judicial review under the "equal protection" and "due process" clauses of the 14th Amendment.[1] From these restrictions a doctrine has been evolved that the legislative action must be "reasonable"; that is, it must not be arbitrary, and must be designed to accomplish some recognized purpose of the government, which purpose must have an intimate relation to the means employed.[2] Since the determination of such a question is necessarily one of fact, the Supreme Court has refused to define what constitutes a reasonable exercise; each case must be decided on its particular circumstances. Thus, it is recognized that what is a proper exercise of the police power will vary according to locality and according to changing economic and social ideals.[3] Although some premature legislation has been checked by the courts,[4] there is no doubt that their determinations are influenced by the spirit of the times; and they refuse to interfere with police regulations unless the character or purpose thereof is utterly unreasonable.[5] Legislation in furtherance of those fundamental social interests which relate to the health, safety, morals, and general welfare of the community have been universally upheld.[6] Similar regulation of economic interests is still in the experimental stage, and the courts have shown no tendency to permit the breaking down, under an unlimited police power, of the constitutional safeguards to private enterprise, or to return to the paternalistic regulation of business which obtained in mediæval England. Statutes designed to prevent fraud and oppression have, however, been repeatedly upheld.[7] In a recent decision a statute which interfered with economic interests by compelling incorporation as a condition to doing a banking business, and by requiring contributions to a deposit guaranty fund, was held invalid. *First National Bank of Holstein* v. *Shallenberger*, 172 Fed. 999 (Circ. Ct., D. Neb.).

Under the present-day individualistic conception of government, the prevention of risk in private enterprise seems never to have been exercised as a governmental function. Yet since early days statutes have required of banks that they have licenses, that they submit to inspection, that they have a certain reserve, and that their investments be restricted.[8] These regulations, though at times aimed against fraud, also plainly seek to lessen the risk of depositors.[9] When questioned, they have been universally upheld, not, however, because they prevent risk, but because there

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[1] Atlantic Coast Line Ry. Co. *v.* N. C. Corporation Commission, 206 U. S. 1.

[2] Chicago, Burlington, & Quincy Ry. *v.* Illinois, 200 U. S. 561, 592; Lawton *v.* Steele, 152 U. S. 133, 137.

[3] Holden *v.* Hardy, 169 U. S. 366. See 14 HARV. L. REV. 273, 276.

[4] City of Chicago *v.* Gunning System, 214 Ill. 628; *Ex parte* Hodges, 87 Cal. 162; Wilkins *v.* Jewett, 139 Mass. 29.

[5] Gundling *v.* Chicago, 177 U. S. 183, 188.

[6] Commonwealth *v.* Carter, 132 Mass. 12; Yick Wo *v.* Hopkins, 118 U. S. 356; People *v.* Ewer, 141 N. Y. 129.

[7] Ozan Lumber Co. *v.* Union County Bank, 207 U. S. 251; Knoxville Iron Co. *v.* Harbison, 183 U. S. 13, 20.

[8] Blaker *v.* Hood, 53 Kan. 499; State *v.* Ritchcreek, 167 Ind. 217; People *v.* Utica, 15 Johns. (N. Y.) 358; FREUND, POLICE POWER, §§ 400, 450.

[9] Meadowcraft *v.* People, 163 Ill. 56.

is an established doctrine that the banking business, owing to its intimate relation to the fiscal affairs of the people, is subject to the police power.[10] It is submitted that the requirement of contributions to a safety fund differs only in degree from recognized banking regulations, and is not so unreasonable as to merit the judicial veto.[11] If the correct ground for legislative interference is kept in mind, there is no reason to fear the wholesale regulation of private business which the circuit court so vividly depicts. Nor should the statute in question be considered an arbitrary regulation merely because there may be some other business which should be similarly controlled.[12]

It is objectionable, however, on another ground. To provide for compulsory incorporation is unreasonable. Since incorporation is open to all, there is not a total prohibition of the business; but as banking is recognized as a legal calling,[13] even such a partial inhibition of individual liberty can be justified only because the character of the business allows it. That very circumstance, however, justifies the regulation of individuals as well as corporations so engaged. It follows, therefore, that the provision is an unwarrantable exercise of the police power,[14] since the means is unnecessary to accomplish the legislative purpose, and since it is unduly oppressive of individuals.[15]

THE POWER OF MUNICIPAL CORPORATIONS TO EXPEND FUNDS IN THE INVESTIGATION OF MUNICIPAL PROBLEMS. — An important extension in the incidental powers of a municipal corporation is recognized in a recent case. The common council of the city of Detroit placed a sum of money, for use in investigating the local street railway problem presented by the pending expiration of certain franchises, at the disposal of the mayor, who appointed to assist him a committee of fifty citizens. The court restrained any payment from this fund on the grounds that the method of payment was contrary to mandatory provisions of the city charter, and that the appropriation was for the purpose of aiding the mayor rather than the common council. But the dissenting opinion on this latter point and the *dictum* of the majority give full recognition to the right of the council to expend funds in collecting information or advice regarding municipal matters. *Attorney General ex rel. Maguire* v. *Murphy*, 122 N. W. 260 (Mich.).

The power of the legislative branch of a municipal corporation to delegate any duty of investigation, such as that of examining the validity of elections to its membership, to a committee of its own members whose

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[10] Blaker *v.* Hood, *supra;* State *v.* Ritchcreek, *supra. Cf.* Commonwealth *v.* Vrooman, 164 Pa. 306.

[11] Noble Bank *v.* Haskell, 99 Pac. 590 (Okl.). In this case a similar safety fund requirement was upheld. In a recent decision in the district court at Topeka, Kansas, as yet unreported, the court held the statutory provision unconstitutional. In several earlier decisions the constitutionality of similar statutes was not questioned. People *v.* Walker, 17 N. Y. 502; Elwood *v.* Treasurer of Vermont, 23 Vt. 701. See 22 HARV. L. REV. 231.

[12] Seaboard Airline Ry. *v.* Seegers, 207 U. S. 73; Heath *v.* Worst, 207 U. S. 338.

[13] Bank of Augusta *v.* Earle, 13 Pet. 519, 596.

[14] State of South Dakota *v.* Scougal, 3 S. D. 55. *Contra*, State of North Dakota *v.* Woodmansee, 1 N. D. 246; Commonwealth *v.* Vrooman, *supra.*

[15] Lawton *v.* Steele, *supra.*